86-2056

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

LAURA B. MOSLEY,
Petitioner,

vs.

SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I

WHETHER, IN A CLAIM OF DISCRIMINATION IN PROMOTION UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE "RELEVANT LABOR MARKET" IS THE EMPLOYER'S WHOLE WORK FORCE, WHERE PROMOTIONS ARE ROUTINELY MADE FROM THAT WORK FORCE.

II

IS IT PRIMA FACIE EVIDENCE OF A CHILLING EFFECT UPON FEMALE TEACHERS SEEKING TO BECOME ADMINISTRATORS IN A LARGE PUBLIC SCHOOL SYSTEM THAT FEMALES OUTNUMBER MALES TWO TO ONE IN THE TEACHING FORCE BUT MALE ADMINISTRATORS CONTROL THE SELECTION PROCESS FOR NEW ADMINISTRATORS AND TWICE AS MANY MALES AS FEMALES APPLY FOR ADMINISTRATIVE POSITIONS?

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1986

LAURA B. MOSLEY,
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vs.

SCHOOL BOARD OF PINELLAS COUNTY, FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioner, LAURA B. MOSLEY, respectfully urges that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit rendered on January 21, 1987, rehearing denied March 30, 1987.

OPINION BELOW

The decision which Petitioner seeks to have reviewed is an unpublished decision dated January 21, 1987. A copy is appended hereto as App. 1.

JURISDICTION

The judgment sought to be reviewed is final and dated January 21, 1987. Petitioner's petition for rehearing was denied March 30, 1987. Copies are appended hereto as App. 9 and 12.

Jurisdiction for this Court to review by certiorari is conferred by 28 USC §1254.

Jurisdiction in the District Court over both Petitioner and Respondent was pursuant to 42 USC §2000e-5(f)(3).

Jurisdiction of the Eleventh Circuit Court of Appeals was pursuant to 28 USC §1291.

STATUTE INVOLVED

Section 703 of the Civil Rights Act of 1964, 42 USC §2000e-2(a) reads:

> (a) Employers. It shall be an unlawful employment practice for an employer—
>
> > (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
> >
> > (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin.

STATEMENT OF THE CASE

I

The Respondent School Board operates one of the largest public school systems in the United States. Although the number of females in its teaching force has always been approximately double the number of males, there never has been a female superintendent of the system and there have always been relatively few females in administrative positions. These positions are dean, assistant principal, principal, and on up to superintendent.

After Petitioner Mosley was denied a promotion from the rank of dean to the higher administrative position of assistant principal and the position was given to a male dean with only one year's experience as a dean as compared to her four years, she brought the present action under Title VII (employment discrimination) of the Civil Rights Act of 1964, 42 USC §2000e, alleging that she was a victim of sex discrimination prohibited by the Act. After a bench trial the District Court for the Middle District of Florida dismissed her complaint. The Court of Appeals for the Eleventh Circuit affirmed.

II

A

In September, 1978 when Mosley applied for the position of assistant principal there were 4,958 persons in the overall teaching force, of which 63% were female and 37% male. In the administrative ranks, on the other hand, the percentages were reversed. 84% of the administrators were male and 16% were female. This disparity has remained unchanged and holds true for the assistant principal position here involved, as is shown by

Figures 1, 2 and 3, *infra,* which cover the seven year period from 1978 until 1985, the year in which the case was tried.

Pinellas County School System
Total Teachers and Administrators by Sex

School Years	Total	Male	Female	%M	%F
1978-79	4,958	1,842	3,116	37	63
1979-80	5,000	1,815	3,185	36	64
1980-81	5,123	1,813	3,310	35	65
1981-82	5,286	1,811	3,475	34	66
1982-83	5,355	1,829	3,526	34	66
1983-84	5,250	1,753	3,497	33	67
1984-85	5,682	1,873	3,809	33	67

Figure 1 (Source: P. Ex. 2 - Extract).

Pinellas County School System
Basic Administrators by Sex

School Years	Total	Male	Female	%M	%F
1978-79	170	143	27	84	16
1979-80	198	148	50	74	26
1980-81	203	152	51	74	26
1981-82	203	154	49	75	25
1982-83	213	158	55	74	26
1983-84	208	151	57	72	28
1984-85	157	107	50	68	32

Figure 2 (Source: P. Ex. 1 - Extract).

Pinellas County School System
Assistant Principals by Sex

School Years	Total	Male	Female	%M	%F
1978-79	53	46	7	87	13
1979-80	82	54	28	65	35
1980-81	85	59	26	69	31
1981-82	85	60	25	70	30
1982-83	93	63	30	67	33
1983-84	87	57	30	65	35
1984-85	45	22	23	45	55[1]

Figure 3 (Source: P. Ex. 1 - Extract).

A former Superintendent of Schools, who was Superintendent from 1972 to 1981, attributed this male dominance to the "good ole boy" system of appointment where the male

> "superintendent reached out and selected . . . his [male] friends, to become assistant principals, principals, assistant superintendents and what have you. We tried to get away from that, but when we evolved this [selection] committee system we went through evolutionary process." (Transcript of testimony in the district court Supp. R2-174).

The selection-committee system which he set up to preclude male domination did not succeed, however, because male administrators continued to control the selection process by controlling the make-up of the selection com-

---

1. In 1984-5 the assistant principal position was divided into two classifications, one with the old "assistant principal" title and the other with the new title "Administrative Assistant." 69 new administrative assistant positions were created of which 42 were male and 27 female. When these figures are added to the remaining assistant principal figures, the ratios are similar to those of prior years: Total 114, male 64, female 50, %M-56 and %F-44.

mittees. The selection committee which excluded Mosley, for example, was made up of six male administrators and one "token" female who was not an administrator. (She was a parent of one of the students and the president of the local high school Parent Teachers Association.) In fact, there were two assistant principal positions open at the time and the male-dominated selection committee nominated six males and no females for the two positions.

B

Promotion to an administrative position is a two-step process. The first step is to obtain the necessary special training and certification in "administration and supervision." Mosley had taken the necessary training and had the required certificate. The second step is to pass the subjective selection process where applicants are evaluated on the basis of a personal interview before the male-dominated selection committee. As noted, in Mosley's case the make-up of the committee was six male administrators and the one "token" female not employed by the school system.

The Equal Employment Opportunity Director for the school system, testified that only a relatively few of the female teachers had taken the special administrative training courses necessary to qualify them for an administrative position. She said that of the teachers actually in this qualified pool only about 35% were female and the other 65% were male. She did not know why females were not qualifying themselves for administrative positions. She said that "[I]t seems to me to show that more men are interested in upward mobility." (Transcript, R2-46, line 2). Asked if the admitted male domination of the administrative positions and male control of the

promotion process would have a chilling effect on females aspiring to an administrative position, her reply was:

> "I cannot say that that would have a chilling effect. It might, but I cannot say that. I really don't know." (R2-45, line 9).

The Executive Director of the Pinellas County Classroom Teachers Association, a male, testified that a female teacher had little incentive to expend the time and money necessary to qualify herself for an administrative position since females had statistically little chance to receive an administrative appointment.

C

A female teacher, like her male counterpart, having only so much time and money to commit to her ongoing professional training, must choose what route to take. If she takes general education courses, her future promotion and advancement opportunities (such as departmental headships or merit raises) will not bring her into direct competition with all other teachers. If, on the other hand, she takes the specialized training in administration and supervision necessary to become an administrator, she will enter the qualified pool where males predominate 2 to 1 over females. Her promotion from the pool will depend upon successfully passing a subjective, personal interview with a selection committee dominated 6 to 1 by males, as occurred in Mosley's case in which the district court found the regular written procedure was being followed. (App. 4).

In committing herself to give up generalized training in favor of training in administration and supervision, she is entering a competition in which a female's chances of success are statistically 1 in 116 while those of a male

are statistically 1 in 13 (1978-79 figures). Only a relatively few females choose to commit the time and money necessary to take the first step by becoming certified in administration supervision. A relatively high number of males do.

III

A

The district court considered the promotion process and the statistical evidence separately. As to the process, it concluded that Mosley had failed to prove

> "that the *composition* of the committee, or its *deliberations* was gender oriented." (App. 7, emphasis added).

No mention was made of the 6 to 1 male-female make-up of the committee.

As to the gross statistical disparity between the numbers of males and females who were administrators, the district court cited *Hazelwood School District v. United States,* 433 U.S. 299 (1977) for the proposition that:

> " 'When special qualifications are required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value.' " (App. 7-8).

Considering the relatively few females to be found in the qualified pool from which administrators were selected, it found no statistical indication of discrimination against females in the promotion process. (App. 8).

The district court made no mention of any chilling effect upon females which male control of the selection process might have caused.

B

The court of appeals affirmed in a three-sentence opinion. It also treated the selection process separate and apart from the statistical picture, as the district court had done. It stated that

> "the district court's findings that the *composition* of [the] . . . selection committee and its *deliberations* were not gender oriented"

were not clearly erroneous. (App. 1, emphasis added).

Next turning to the statistical picture, and treating it separately as the district court had done, the court of appeals stated:

> "The plaintiff also failed to prove to the district court's reasonable satisfaction that past discriminatory practices of defendant had a *chilling effect* on female educators, discouraging them from becoming minimally qualified for promotion. In the absence of such proof the district court correctly held that the relevant labor market for the purpose of promotion was the group that met the formal qualifications for promotion." (App. 1-2, emphasis added).

The appellate court's statement that Mosley had failed to prove a chilling effect was both gratuitous and speculative on the appellate court's part. Nothing in the district court's decision indicated that it had considered a chilling effect.

REASONS WHY WRIT OF CERTIORARI SHOULD BE ISSUED

I

Whether, in a Claim of Discrimination in Promotion Under Title VII of the Civil Rights Act of 1964, the "Relevant Labor Market" Is the Employer's Whole Work Force, Where Promotions Are Routinely Made From That Work Force.

This Court has never directly addressed the problem of proof of discrimination in a *promotion* context as distinguished from a hiring context. Most of the guidance which this Court has provided has been in the hiring context. *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971), *International Brotherhood of Teamsters v. United States,* 431 U.S. 324 (1977), and *Hazelwood School District v. United States, supra,* are examples. In *Teamsters* this court said that—

> ". . . it is ordinarily to be expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the composition of the population in the community from which employees are hired. Evidence of longlasting and gross disparity between the composition of a work force and that of the general population thus may be significant. . ." 431 U.S. at 339, n.20.

Translated into the terms of this case, this means that it is ordinarily to be expected that nondiscriminatory *promotion* practices will result in a supervisory work force more or less representative in its male-female ratio of the male-female ratio which prevails in the employer's

whole work force from which the supervisors were promoted.

Because *Teamsters* involved truck drivers and the present case involves school administrators, the district court and the court of appeals thought that this case was controlled by the principle announced in *Hazelwood School District v. United States, supra,* 308 n.13 (1977) that—

> " 'When special qualifications are required to fill particular jobs, comparisons to the general population (rather than the smaller group of individuals who possess the necessary qualifications) may have little probative value. Hazelwood School District of [sic] United States, 433 U.S. 299, 308, n. 13 (1977)' " (App. 7-8).

This court taught that the smaller groups of individuals who possess the necessary qualifications for a particular job are the "relevant labor market" for *hiring* purposes, as that term is used in *Hazelwood,* 433 U.S. at 308. If minority members are not hired from the relevant labor market in proportion to their numbers in that market, the statistical indication is that their minority status is a factor in the hiring process. *Ibid.*

Both courts below failed to recognize that *Hazelwood* was a *hiring* case. In a hiring case it generally is of no significance why a pool of qualified applicants happens to contain a particular mix or ratio of minority members as compared to non-minority members. It is sufficient as a test for discrimination in hiring to ascertain whether minority applicants are being hired out of the pool in proportion to their numbers in the pool.

In promotion cases, on the other hand, selections are usually made from the employer's own work force and not the outside labor market. Since the employer has control

of its whole work force, it also has control of all of the stages in the promotion process through which an employee must pass to qualify for promotion. To test for discrimination in promotion, therefore, it is not sufficient to compare the proportion of minority members promoted out of the qualified pool with the proportion of their numbers in the pool, as *Hazelwood* teaches for a hiring situation. It is necessary to ascertain whether the employer is controlling *which employees enter the qualified pool.* If the employer effectively limits the numbers of minority members who enter the pool, it is immaterial that the few who do get into the pool are promoted out in proportion to their numbers in the pool, the comparison which the *Hazelwood* formula is designed to make. Only a comparison of the proportion of the minority in the employer's *whole work force* to the proportion of the minority who are being promoted to higher positions will give the "telltale sign of purposeful discrimination" to which *Teamsters,* 431 U.S. at 339, n.20, refers.

Those courts of appeals which have dealt with promotion cases where selection is from the employer's own work force have concluded that the "relevant labor market" for such cases, as that term is used in *Hazelwood,* is the employer's whole work force. See *Davis v. Califano,* 613 F.2d 957 (DC Cir. 1980) (75% of promotions made from the employer's own work force), *Stastny v. Southern Bell T. & T. Co.,* 628 F.2d 267 (4th Cir. 1980) (87% of management vacancies filled from the employer's own work force) and *Griffin v. Carlin,* 755 F.2d 1516 (11th Cir. 1985) (Promotions to supervisory positions made "almost exclusively from the internal work force." 1526.)

In the present case there is a gross statistical disparity between females and males when the whole teaching force is used as the relevant labor market. This is

the gross statistical disparity which both *Teamsters*, 431 U.S. at 339, and *Hazelwood*, 433 U.S. at 307-8, hold to make out a prima facie case of discrimination. The court of appeals in this case declined to follow its own precedent in *Griffin v. Carlin, supra,* however. Reverting to *Hazelwood,* it held that in this case the relevant labor market was not the whole teaching force but only the qualified pool, "the group that met the formal qualifications for promotion". (App. 1). This court should address the question as to what constitutes the relevant labor market in a promotion case and incidentally resolve the conflict which now exists between the Eleventh Circuit on the one hand and the District of Columbia and Fourth Circuits on the other.

II

Is It Prima Facie Evidence of a Chilling Effect Upon Female Teachers Seeking to Become Administrators In a Large Public School System That Females Outnumber Males Two to One in the Teaching Force but Male Administrators Control the Selection Process for New Administrators and Twice As Many Males As Females Apply for Administrative Positions?

Apparently in an effort to rationalize its failure to follow its own precedent in *Griffin v. Carlin,* the Eleventh Circuit court introduced the idea of a chilling effect. It suggested that the district court had actually ruled against Mosley because she had not proved a chilling effect. This raises a question which the appellate court failed to consider—what constitutes proof of a chilling effect in a promotion situation. This court has provided an answer in the hiring context. It has said that in a hiring context proof of a failure of minority members to apply for a

job is proof also of a chilling effect. In *Teamsters* this court stated:

> "When a person's desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture *he is as much a victim of discrimination as is he who goes through the motions of submitting an application.*" (Emphasis added). 431 U.S. at 365-6.

In *Griggs v. Duke Power Company, supra,* 432, this court said that "built-in headwinds" are created by selection procedures which impact more strongly on some groups than others. There was no added requirement that the adverse selection procedure also have a chilling effect. As a matter of law the chilling effect was present in the adverse selection procedure.

In *Dothard v. Rawlinson,* 433 U.S. 321, 330-31 (1977) the Court said:

> "The application process itself might not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory. . . ."

Here the selection process is a two-step procedure with the discriminatory, subjective, personal interview located at the second step. The first step, securing a certificate in administration and supervision, is a legitimate, objective requirement. It can be justified as a "business necessity" and "related to job performance" under *Griggs v. Duke Power Co., supra,* 431. The statistical evidence shows, however, that the "built-in headwinds" *Griggs, supra,* 432, of the subjective second step

predictably discourage females from undertaking the first step. It is the *combination* of the subjective personal interview with the objective certification requirement which discourages females from taking the first step by satisfying this legitimate, objective requirement. Speaking to such a combination this court said in *Albemarle Paper Co. v. Moody,* 422 U.S. 405 (1975):

> "If an employer does then meet the burden of proving that its tests are 'job related,' it remains open to the complaining party to show that *other tests or selection devices,* without a similarly undesirable racial effect, would also serve the employer's legitimate interest in efficient and trustworthy workmanship. . . Such showing would be evidence that the employer was using its tests merely as a 'pretext' for discrimination." 422 U.S. at 425. (Emphasis added)

Translated into the terms of this case, this means that even though the objective first-step requirement is job-related, its combination with a subjective second-step requirement is evidence that the process as a whole is merely a pretext for discrimination, as the statistics show. It is not too much to say that the Civil Rights Act of 1964, as was said of the Fifteenth Amendment in another context, "nullifies sophisticated as well as simple-minded modes of discrimination." *Lane v. Wilson,* 307 U.S. 268 at 275 (1939).

For this reason also this court should grant certiorari.

Respectfully submitted,

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APPENDIX

DO NOT
PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-3007

LAURA B. MOSLEY,
Plaintiff-Appellant,

versus

SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA,
Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(January 21, 1987)

Before TJOFLAT and VANCE, Circuit Judges, and ATKINS* Senior District Judge.

PER CURIAM:

The district court's findings that the composition of defendant's selection committee and its deliberations were not gender oriented were not clearly erroneous. The plaintiff also failed to prove to the district court's reasonable satisfaction that past discriminatory practices of defendant had a chilling effect on female educators, dis-

*Honorable C. Clyde Atkins, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

couraging them from becoming minimally qualified for promotion. In the absence of such proof the district court correctly held that the relevant labor market for the purpose of promotion was the group that met the formal qualifications for promotion.

AFFIRMED.

(Filed September 17, 1985)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 84-880-Civ-T-13

LAURA B. MOSLEY,
Plaintiff,

vs.

SCHOOL BOARD OF PINELLAS COUNTY,
Defendant.

MEMORANDUM DECISION

The plaintiff brought this action alleging that during the 1978-79 school year, she applied for the position of assistant principal at the School Board of Pinellas County's Countryside School, and that, although she had superior qualifications for the position, she was denied the position because of her sex, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq., and in particular §706(f)(3), 42 U.S.C. §2000e-5(f)(3). The case was tried before the Court in June, 1985, solely on the issue of liability.

In the fall of 1978, the plaintiff, along with 65 other applicants, responded to a document entitled "Instructions of Administration and Supervisory Positions" by submitting her application to the personnel department for one of two positions to begin in the 1979-80 school year at the newly constructed Countryside High School. Applicants were required to meet minimum qualifications in "supervision and administration" by the time the job

commenced. The two positions were for assistant principals, one for "curriculum", the other for "administration". The plaintiff indicated a preference for the latter.

The 66 applications were reviewed by a screening committee as provided in a document entitled "The Recruitment and Placement of Administration and Supervisory Personnel" that was adopted by the Superintendent's Executive Committee as amended on February 27, 1978. The screening committee was composed of an employee of the personnel department, an area superintendent, the principal of the school affected and others chosen by the committee. Others chosen by the committee included two other principals, an assistant principal, the Director of Equal Opportunity and a lay person from the general public. All participated on the committee except for the Director of Equal Opportunity, who was unable to attend because of a scheduling conflict. Of the 66 applicants reviewed, 43 were submitted by males and 23 by females. The screening committee narrowed the list to 29 applicants by evaluating each person's education and experience as an administrator and supervisor. These 29 applicants were granted interviews before the committee. The plaintiff was among the group of 29 which was composed of 18 white males, three black males, five white females and three black females.

It was evident from the testimony presented by the witnesses, including the plaintiff's testimony, that the questions asked during the screening committee interviews were not gender oriented. In fact, all interview questions were job related.

After the interviews, which were conducted on October 10 and 11, 1978, three or four finalists for each position were selected. Those selected, all of whom were

male, were referred to the principal-elect of Countryside High School, who, in turn, recommended his choice for each position to the area superintendent. The area superintendent approved the names selected and passed them on to the Superintendent of Pinellas County Schools for approval and final referral to the School Board itself, which formally made the appointments. The post sought by the plaintiff was awarded to Mr. Evans.

As part of her claim, the plaintiff alleged that Mr. Evans was appointed not because of merit, but rather because of his former association with the new Countryside principal. The plaintiff also claimed that Mr. Evans had been pre-selected and was not as qualified for the position as she.

A comparison of the plaintiff's qualifications with those of Mr. Evans, and a review of the screening committee's findings, do not support the plaintiff's claims. Both the plaintiff and Mr. Evans were certified in administration within the time limits required by administration policy. Although the plaintiff had been a dean for four years and Mr. Evans had been a dean for only two, Mr. Evans had been teaching in the school system ten years longer. The plaintiff was ranked from the lowest to about the middle rank of the 29 evaluated by the screening committee. Mr. Evans was ranked as one of the top three by the majority of the committee. Mrs. Hole, the lay person sitting on the committee, ranked the plaintiff as number 13 on the list. Mrs. Hole ranked Mr. Evans as number three, higher than any other female interviewed.

In addition to the above claims, the plaintiff presented statistical data indicating that the school system had approximately three times as many females as males

employed by the School Board in teaching and administrative positions (combined) from the school year 1978-79 through 1984-85. The plaintiff further presented figures showing that about two-thirds of Pinellas school administration positions were held by males during the same time period as evidence of discrimination in promotion. The affirmative action officer for the School Board testified that such statistical evidence was irrelevant and inappropriate since only those who were properly certified in administration and supervision could be considered for the position of assistant principal. She further testified that those holding the proper certificates for assistant principal numbered about 67% male and 33% female.

Claims of employment discrimination under Title VII may arise in two ways, disparate treatment or disparate impact. *International Brotherhood of Teamsters v. United States,* 431 U.S. 324 (1977). The plaintiff has claimed discrimination under both theories. In order to make a *prima facia* showing of disparate treatment in promotion, the plaintiff must show that (1) she is a protected minority, (2) was qualified for and applied for the promotion, (3) was rejected despite these qualifications, and (4) other non-minority employees with equal or lesser qualifications were promoted. *Perryman v. Johnson Products Company, Inc.,* 698 F.2d 1138, 1142 n.7 (11th Cir. 1983) (adapting *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) standard to discrimination in promotion case).

Although the plaintiff ostensibly made out a *prima facia* case by arguing that she had at least equal qualifications as those of Mr. Evans, she failed to meet her burden of persuading the Court that the legitimate nondiscriminatory reasons proffered by the School Board for its employment decision were merely pretextual. *See eg.,*

Texas Department of Community Affairs v. Burdine, 450 U.S. 253-256 (1981) (burdens of parties in employment discrimination case). Those legitimate reasons include evidence that the individual members of the screening committee, using non-gender oriented, job related questions, rated the plaintiff from the bottom to about the middle of a group of 29 competing for only two positions. In fact, the majority of the candidates finished above the plaintiff with higher numerical scores. Several females placed higher in the committee's rankings, but did not file complaints of discrimination. The plaintiff failed to prove that the composition of the committee, or its deliberations were gender oriented. She further failed to prove that the screening committee's decision, or any other decision in the chain of the hiring process were based upon a discriminatory motive as required by law. *See Id.* at 256 (plaintiff must persuade court that "employer's proffered explanation is unworthy of credence["]); *McDonnell Douglas,* 411 U.S. at 804-805.

The statistics presented by the plaintiff showing a disparity between the male-female ratio in the Pinellas County teacher population as compared to the male-female ratio of those in school administration positions fail to support the plaintiff's claim under disparate treatment and further fail to make out a case of disparate impact. The statistics do not take into account the fact that in order to apply for the position the applicant was required to hold a certificate for the State Department of Education indicating that they were certified in "supervision and administration". The relevant labor market applicable to this case is the pool of educators who held the proper certification and not the general population of teachers in the Pinellas school district. As stated by the Supreme Court: "When special qualifications are

required to fill particular jobs, comparisons to the general population (rather than to the smaller group of individuals who possess the necessary qualifications) may have little probative value." *Hazelwood School District of United States,* 433 U.S. 299, 308 n. 13 (1977). When compared, those possessing the necessary certificate in the case at bar correspond to the percentage of those that hold administrative positions in Pinellas County schools. In other words, a proper comparison between the relevant labor pools shows no disparate impact.

For the foregoing reasons, this Court finds that the plaintiff has failed to meet her burden of persuading this Court that she is entitled to any of the relief sought from the defendant. Accordingly, the clerk is directed to enter judgment in favor of the defendant, Pinellas County School Board. Each party shall bear their own costs.

DONE AND ORDERED in Chambers in Tampa, Florida, this 17th day of September, 1985.

/s/ George C. Carr
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-3007
D.C. Docket No. 84-880

LAURA B. MOSLEY,
Plaintiff-Appellant,

versus

SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA,
Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

Before TJOFLAT and VANCE, Circuit Judges, and
ATKINS*, Senior District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment

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*Honorable C. Clyde Atkins, Senior U. S. District Judge for the Southern District of Florida, sitting by designation.

of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

Entered:

January 21, 1987

For the Court:

Miguel Cortez, Clerk
By: /s/ David Maland
Deputy Clerk

ISSUED AS MANDATE: April 16, 1987

(Filed September 17, 1985)

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

84-880 Civ T-13
GEORGE C. CARR, Judge

LAURA B. MOSLEY,

v.

SCHOOL BOARD OF PINELLAS COUNTY,

☐ Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

[x] Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

That judgment is entered in favor of the defendant, Pinellas County School Board. Each party shall bear their own costs.

Clerk
Donald M. Cinnamond
By /s/ Della McConnell
Deputy Clerk

Date September 17, 1985

(Filed March 30, 1987)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-3007

LAURA B. MOSLEY,
Plaintiff-Appellant,

versus

SCHOOL BOARD OF PINELLAS
COUNTY, FLORIDA,
Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

ON PETITION(S) FOR REHEARING

March 30, 1987

BEFORE: TJOFLAT and VANCE, Circuit Judges, and
ATKINS*, Senior District Judge

PER CURIAM:

The petition(s) for rehearing filed by Appellant is denied.

ENTERED FOR THE COURT:

/s/ (Illegible)
United States Circuit Judge